APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

02-2888

ASCHEIM

v.

JUG, et al.

Cappy Ascheim, Appellant
Western District of Pennsylvania Civil No. 00-cv-01056)

ORDER

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Third Circuit LAR Misc. 107.2,

It is O R D E R E D that the above-entitled case is hereby dismissed for failure to timely prosecute;

It is FURTHER O R D E R E D that a certified copy of this order be issued forthwith as the mandate.

For the Court,

/s/ Marcia M. Waldron
Clerk

Date: June 5, 2003
cc: Cappy Ascheim
Gary Milnes, Esq.
Henry E. Rea, Esq.

APPENDIX B

APPENDIX B
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 7, 2003
#D-82

No. 02-2888

CAPPY ASCHEIM
Appellant
v.
FRED C. JUG, JR., ESQUIRE, et al.
(W.D. of PA Civil No. 00-cv-01056)

Present: Rendell, Circuit Judge

1. Motion by Pro Se Appellant to Reconsider Court Order Dated April 17, 2003, to Vacate Court Order Dated April 17, 2003 and to Strike the "Noncompliance Letter" and "Compliance Received" Docket Entries

/s/ Gregory P. Kane
Gregory P. Kane 267 299 4946
Briefing Specialist/Court Crier

Response due: 5/15/03
See Court Order of 4/17/03

ORDER

The foregoing (*motion is DENIED). [*Judge's handwriting]

By the Court,

/s/ illegible
Circuit Judge

Dated: May 9 2003
GPK/cc: CA GM

APPENDIX C
APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

April 8, 2003
#D-82

No. 02-2888

CAPPY ASCHEIM
Appellant

v.

FRED C. JUG, JR., ESQUIRE, et al.
(W.D. of PA Civil No. 00-cv-01056)

Present: Rendell, Circuit Judge

1. Letter Dated March 24, 2003 Construed as Motion by Pro Se Appellant for Leave to File Overlength Brief.

/s/ Gregory P. Kane
Gregory P. Kane 267 299 4946
Briefing Specialist/Court Crier

Response due: 4/7/03
See Clerk's Order of 4/2/03

ORDER

The foregoing motion is DENIED. The pro se appellant has 14 days from the date of this order to file a conformed brief.

By the Court,

/s/ illegible
Circuit Judge

Dated: Apr 17 2003
GPK/cc: CA GM

APPENDIX D

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

January 27, 2004

02-2888

CAPPY ASCHEIM, Appellant

v.

FRED C. JUG, ESQUIRE, et al.

(US DC Western - Pittsburgh Civil No. 00-1055)
(sic - should be 1056)(rjc)

Present: NYGAARD, Circuit Judge

Motion by Appellant to For Leave to File Exhibits to the Petition for Rehearing.

Copy of Petition for Rehearing

(Line blank)
Susan M. Acerba
267-299-4920
Case Manager

PETITION GRANTED [Judge's handwriting]

By the Court

/s/Nygaard
Circuit Judge

Dated: Feb 24 2004

SMACC TO: CA, GM

APPENDIX E
APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

October 2, 2003
B-3

02-2888

CAPPY ASCHEIM, Appellant

v.

FRED C. JUG, ESQUIRE, et al.

(US DC Western - Pittsburgh Civil No. 00-1055)
(sic - should be 1056)(rjc)

Present: NYGAARD, BARRY and SMITH, Circuit Judges

Motion by Appellant to Reopen the Appeal.

(Line Blank)

Case Closed for Failure
to File Brief & Appendix

Susan M. Acerba
267-299-4920
Case Manager

The foregoing motion by appellant to reopen the appeal is denied.

By the Court

/s/Richard L. Nygaard
Circuit Judge

Dated: October 24, 2003

SMA: CC: TO: AC, GM

APPENDIX F

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790
www.ca3.uscourts.gov

May 5, 2004

Mr. Cappy Ascheim
5100 Fifth Avenue, Unit 407
Pittsburgh, PA 15232

(Note: Please see C.A note at application 04A79 at Appendix C.)

Re: Docket No. 02-2888
Ascheim vs. Jug
D. C. No. 00-cv-01056

Dear Mr. Ascheim:

This will acknowledge receipt of document entitled "Petition for Rehearing En Banc" in the above-entitled case.

An order was filed on 4/23/04 denying your petition for panel rehearing. Pursuant to Rule 40 of the FRAP a petition for rehearing en banc was due when your petition for panel rehearing was filed. The Court will only consider one petition for rehearing and not serial petitions.

Very truly yours,
MARCIA M. WALDRON
Clerk

By: /s/Susan M. Acerba
Case Manager

cc: Gary Milnes, Esq.

APPENDIX G

Relevant Constitutional and Statutory Provisions
United States Constitution - September 17, 1787
Article III, Section 1.

The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

First Congress, Sess. I. Ch. 20. September 24, 1789
1 Stat. 73, 81-82 (Peters' Edition - 1850)

Sec. 14. And be it further enacted, That all the beforementioned courts of the United States, shall have power to issue writs of *scire facias, habeas corpus,* and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment. ...

Title 28, United States Code, §1651(a) - Writs
62 Stat. 944

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

APPENDIX H
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

MEMORANDUM ORDER

This action arises from the defendants' attempts to collect certain condominium fees due and owing from plaintiff's mother.

Pro se plaintiff Cappy Ascheim ("Ascheim") is the son of Esther Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect Esther Ascheim's past due condominium fees. Ascheim's complaint and amendment thereto is not a model of clarity, consisting of thirty pages of mind-numbing detail. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et. seq. (the "Act") during their efforts to collect the past due condominium fees. Pending before the court is defendants' motion to dismiss plaintiff's complaint and amended complaint pursuant to Fed. R. Civ. P. 12(b)(6)(Doc. No. 5) and motion for sanctions (Doc. No. 8).

I. Motion to Dismiss

A. Standard of Decision

In deciding a Rule 12(b)(6) motion, we accept all well-pleaded facts as true and draw all inferences in favor of the non-moving party. We focus on the pleadings in addressing the motion, but may also consider other items appearing in the record of the case. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384-85 and n.2 (3d Cir. 1994). A claim should not be dismissed unless it appears beyond doubt that the non-moving party can prove no set of facts in support of its allegations which would entitle it to relief. Conley v. Gibson, 355 U.S. 41/45-46 (1957).

B. Analysis

The defendants argue that Ascheim fails to state claim because the Act does not cover condominium fees. We disagree.

The defendants cite Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1168-69 (3d Cir. 1987) in support of their position, wherein the United States Court of Appeals for the Third Circuit stated that the type of "debt" covered by the Act is one which involves the offer or extension of credit to a consumer. In Pollice v. National Tax Funding, L.P., 225 F.3d 379, 400-01 (3d Cir. 2000), however, the Court of Appeals held that the statement in Zimmerman was dictum and went on to hold that water and sewer obligations meet the definition of a "debt" under the Act. Based on the Court of Appeals' analysis in Pollice, we find that condominium fees qualify as a "debt" under the Act.

The defendants maintain in the alternative that Ascheim's claim for an alleged violation of 15 U.S.C. Section 1692(b), which prohibits a debt collector from communicating with third persons concerning the collection

of a debt, must be dismissed because the debt at issue in this case is Ascheim's mother, not his. The defendants argue, therefore, that Ascheim lacks standing to assert this claim.

The complaint alleges, and the defendants has recognized for purposes of their motion, that Ascheim is acting on behalf of his mother via a power of attorney. Thus, we interpret the complaint as asserting a Section 1962(sic)(b) claim by Ascheim on his mother's behalf.

The defendants also argue that the Section 1962(sic)(b) claim should be dismissed because an attorney purporting to represent Ascheim contacted the defendants and began discussing the condominium fees. They contend that the only communication instituted by them was a follow-up letter to the attorney regarding that conversation.

Section 1962(sic)(b) prohibits communication with third parties concerning a debt, except communication with a consumer's attorney. Ascheim alleges in his complaint that the attorney who contacted the defendants was not representing him in connection with the condominium fees. Indeed, Ascheim alleges that during the telephone conversation with the defendants, the attorney informed the defendants that he was not representing Ascheim. Compl. para. 71. We cannot find at this time, therefore, that Ascheim fails to state a claim under Section 1962(sic)(b).

Accordingly, the defendants' motion to dismiss will be denied.

II. Motion For Sanctions

The defendants' move for sanctions due to Ascheim's failure to file a response to their motion to dismiss.

Ascheim has been very diligent in the prosecution of the instant suit, meeting all other requisite filing dates. As to his failure to timely file a response to the motion to dismiss, Ascheim had delivered to chambers a motion for an extension of time to file the response. Under these

circumstances, we find that sanctions for failing to file a response are not warranted.

Accordingly, the defendants' motion for sanctions will be denied.

For the foregoing reasons, IT IS HEREBY ORDERED that the defendants' motion to dismiss the plaintiff's complaint and amended complaint (Doc. No 5) is DENIED and the defendants' motion for sanctions (Doc. No. 8 is DENIED.

A status conference shall be held on May 25, 2001 at 11:30 a.m.

SO ORDERED this 30 day of March 2001.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX I
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM,	)	
Plaintiff,	)	
v.	)	Civil Action No.
	)	00-1056
FRED C. JUG, JR. ESQUIRE,	)	
and BRANDT, MILES (sic) & REA,	)	
a Professional Corporation,	)	
Attorneys at Law,	)	
Defendants.	)	
	)	

MEMORANDUM ORDER

This action arises from the defendants' attempts to collect certain condominium fees due and owing from Esther Ascheim ("E. Ascheim"). Pro se plaintiff Cappy Ascheim ("C. Ascheim") is the son of E. Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. C. Ascheim is acting on behalf of his mother, who is incompetent, via a durable power of attorney and brings this suit as her representative. C. Ascheim is not licensed to practice law. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect E. Ascheim's past due condominium fees. C. Ascheim's complaint and amendment thereto is not a model of clarity, consisting of thirty pages of agonizing ramblings. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et seq. ("FDCPA") during their efforts to collect the past due condominium fees from E. Ascheim.

Pending before the court is the defendants' Motion to Enjoin Cappy Ascheim From Prosecuting This Action Without the Assistance of Counsel (Doc. No. 32). Citing Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), the defendants argue that C. Ascheim cannot prosecute this suit on behalf of his mother without being represented by counsel. We agree.

In Osei-Afriyie, the plaintiff's children were treated by the defendant hospital. The plaintiff, who was not an attorney, instituted a medical malpractice action against the hospital on behalf of his children. Although the issue of plaintiff acting as legal counsel had never been raised in the lower court, the Court of Appeals raised the issue sua sponte, finding that the plaintiff could not represent his children. The Court explained:

> "(W)e agree with Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam), that a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. The choice to appear pro se is not a true choice for minors who under state law, see Fed. R. Civ. P. 17(b), cannot determine their own legal actions. There is thus no individual choice to proceed pro se for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others. It goes without saying that it is not in the interest of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected."

Osei-Afriyie, 937 F.2d at 882-883 (quoting Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59,61 (2d Cir. 1990)); see Meeker, 782 F.2d at 154 ("We hold that under Fed. R. Civ. P. 17(c) . . . a minor child cannot bring suit

through a parent acting as next friend if the parent is not represented by an attorney.") Just so here.

C. Ascheim cannot, as he argues, serve as legal counsel to his incompetent mother pursuant to a durable power of attorney. Pursuant to Fed. R. Civ. P. 17(c), he may sue in her name as her representative, but he must retain legal counsel to bring and prosecute that suit. Indeed, if one were to accept C. Ascheim's position, anyone could engage in the practice of law under the guise of a power of attorney.

Moreover, this case is a model example of one where it is not in the interest of the incompetent to be represented by a non-attorney. This case is a simple one, concerning one or two alleged violations of the FDCPA with a maximum recovery of $2,000. Yet, C. Ascheim failed to file a response to the defendants' motion for summary judgment which was due on November 3, 2001. See Case Management Order (Doc. No. 21) (responses to summary judgment motions due thirty days after the filing of such motions). C. Ascheim has filed instead a seemingly endless series of motions and briefs consisting of largely irrelevant material that in no way advances the progress of the case. Accordingly, the defendants' motion to enjoin C. Ascheim from prosecuting this action without the assistance of counsel will be granted. Plaintiff will be given thirty days to retain counsel. Plaintiff's failure to do so will result in dismissal of the case.[1]

For the foregoing reasons, IT IS HEREBY ORDERED that the defendants' Motion To Enjoin Cappy Ascheim From Prosecuting This Action Without The Assistance Of Counsel (Doc. No. 33) is GRANTED. Accordingly, Cappy Ascheim is enjoined from acting as legal counsel in this action. Plaintiff shall have thirty (30) days

---

[1] We note that after reviewing the defendants' motion for summary judgment, it appears that judgment should be entered in favor of the defendants and against the plaintiff. We are constrained from ruling on the emotion, however, until plaintiff has been given an opportunity to retain counsel and file an appropriate response.

from the date of this memorandum order to retain counsel. If counsel has not entered an appearance on behalf of plaintiff within thirty (30) days of the date of this memorandum order, the case will be dismissed.

IT IS FURTHER ORDERED, that defendants' motion to schedule argument on their motion to enjoin C. Ascheim from prosecuting the case (Doc. No. 37) is DENIED as moot.

Also pending are the following motions filed by C. Ascheim, which are all denied as he cannot serve as counsel for his mother in this action:

- Plaintiff's Motion to Amend (Doc. No. 22) is DENIED.
- Plaintiff's Motion for Extraordinary Relief (Doc. No. 35) does not appear to be a motion but a copy of a motion filed with the Pennsylvania Supreme Court in connection with a separate action before that court. To the extent the motion seeks action before this court, however, the motion is DENIED.
- Plaintiff's Motion to Amend (Doc. No. 36) is DENIED.
- Plaintiff's Motion to Extend Time (Doc. No. 38) is DENIED.
- Plaintiff's Motion to Extend Time (Doc. No 42) is DENIED.

SO ORDERED this 25 day of January, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX J
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

ORDER

Pursuant to the Memorandum Order dated January 25, 2002 (Doc. No. 50) plaintiff was given thirty days leave to retain counsel or suffer dismissal of the above-captioned action. The thirty day period has expired and counsel has not yet entered an appearance on behalf of plaintiff. Accordingly, IT IS HEREBY ORDERED that the case is DISMISSED.

The Clerk is directed to mark this case closed.

SO ORDERED this 3 day of June, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX K

HPS-141 **UNREPORTED-NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2930

IN RE: CAPPY ASCHEIM, Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Western District of
Pennsylvania (Related to W.D. Pa. Civ. No. 00-cv-1056)
Honorable Robert J. Cindrich

Submitted Under Rule 21, Fed. R. App. Pro.
August 6, 2002

Before: BECKER, CHIEF JUDGE,
WEIS AND GARTH CIRCUIT JUDGES
(Filed September 17, 2002)

OPINION

PER CURIAM

Pro se petitioner Cappy Ascheim seeks a writ of mandamus directing the United States District Court for the Western District of Pennsylvania to vacate its order dismissing his lawsuit brought pursuant to the Fair Debt Collection Practices Act "(FDCPA"), 15 U.S.C. §1692. For the reasons that follow, we will deny the mandamus petition.

In May 2002, Ascheim filed a complaint in the District Court alleging that defendants violated the FDCPA during efforts to collect condominium fees from his mother. In January 2002, the District Court entered an order granting defendants' motion to enjoin Ascheim from prosecuting the lawsuit on behalf of his mother without an attorney. Ascheim filed a notice of appeal, which is currently pending in this Court. See C.A. No. 02-1558. On June 4, 2002 the District Court entered an order dismissing Ascheim's complaint for failure to obtain an attorney in violation of the District Court's order entered in January 2002. Ascheim filed a motion for reconsideration followed by a notice of appeal. Ascheim's motion for reconsideration is still pending in the District Court and his appeal is pending in this Court.[1] See C.A. No. 02-2888. Ascheim's mandamus petition seeks an order directing the District Court to vacate its order dismissing his case entered on June 4, 2002.

A writ of mandamus is an extreme remedy that is invoked only in extraordinary situations. See Kerr v. United States Dist. Court, 426 U.S. 394, 40 (1976). Additionally, "mandamus is not a substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction". In re Chambers Development Company, Inc., 148 F.3d 214, 226 (3d Cir 1998). Ascheim has made no showing (nor does it appear that he could show) that the relief requested in his petition for writ of mandamus cannot be pursued in his pending appeals. As noted, mandamus is not a substitute or alternative to the normal appellate process.

Accordingly, we will deny Ascheim's writ of mandamus.

---

[1] Because Ascheim's notice of appeal was filed before the District Court disposed of his motion for reconsideration, the notice docketed at 02-2888 will become effective to appeal the underlying order when the District Court disposes of his motion for reconsideration. Fed R. App. P. 4(a)(4)(B)(i).

APPENDIX L
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

MEMORANDUM ORDER

Pending before the court is plaintiff's motion for reconsideration (Doc. No. 55) of the court's June 3, 2002 order (Doc No. 54) dismissing the case.

Background

This action arises from the defendants' attempts to collect certain condominium fees due and owing from Esther Ascheim ("E Ascheim"). Pro se plaintiff Cappy Ascheim ("C Ascheim") is the son of E. Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. C. Ascheim is acting on behalf of his mother, who is incompetent, via a durable power of attorney and brings this suit as her representative. C. Ascheim is not licensed to practice law. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect E. Ascheim's past due condominium fees. C. Ascheim's complaint and amendment thereto is not a model of clarity. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et seq.

("FDCPA") during their efforts to collect the past due condominium fees from E. Ascheim.

Citing Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), the defendants filed a Motion to Enjoin Cappy Ascheim From Prosecuting This Action Without the Assistance of Counsel (Doc. No. 32) arguing that C. Ascheim cannot prosecute this suit on behalf of his mother without being represented by counsel. By memorandum order dated January 25, 2002 (Doc. No. 50), the court granted the defendants' motion and enjoined C. Ascheim from acting as legal counsel in this action. The court also granted plaintiff thirty days leave from the date of the January 25, 2002 memorandum order to retain counsel and further ordered that the case would be dismissed if counsel had not entered an appearance on behalf of plaintiff within the thirty day period.

Before the court entered any additional orders in the case, C. Ascheim filed a notice of appeal to the United States Court of Appeals for the Third Circuit on February 25, 2002 directed at the January 25, 2002 memorandum order. Thereafter, the court entered an order dated June 3, 2002 (Doc. No. 54) dismissing the case for plaintiff's failure to have legal counsel enter an appearance. On June 14, 2002, C. Ascheim filed the pending motion for reconsideration directed at the June 3, 2002 order. On July 8, 2002, he filed another notice of appeal. In an order dated August 7, 2002, the Court of Appeals stayed ruling on the two appeals pending this court's disposition of the motion for reconsideration.

Ruling

As has been the case with most of C. Ascheim's filings in this case, the precise relief sought by his motion for reconsideration is difficult to discern. It appears, however, that the motion is based on the argument that the court was without jurisdiction to enter the June 3, 2002 order

dismissing the case in light of the February 25, 2002 notice of appeal.

"Ordinarily, a notice of appeal divests the district court of jurisdiction". Martinez v. Quality Value Convenience, Inc., 63 F. Supp. 2d 651, 653 n.1 (E.D. Pa. 1999) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982)). However, "the district courts should continue to exercise [] jurisdiction when faced with clearly premature notices of appeal". Mondrow v. Fountain House, 867 F.2d 798, 800 (3d Cir. 1989). "Unlike a timely notice of appeal, a premature notice of appeal does not divest the district court of jurisdiction". Id.

The February 25, 2002 notice of appeal was prematurely filed. That part of the January 25, 2002 memorandum order enjoining C. Ascheim from acting as legal counsel was not immediately appealable. See United States v. Whittaker, 268 F.3d 185,192 (3d Cir. 2001) ("(W)hen a court disqualifies counsel in a civil case, its order is not immediately appealable".). Nor was that part of the order granting plaintiff thirty days leave to retain legal counsel, or suffer dismissal of the action, a final appealable order. The court had not yet dismissed the case. See Van Cauwenberghe v. Biard, 486 U.S. 517, 521-522 (1988) ("A party generally may not take an appeal . . . until there has been a decision by the district court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" (citation omitted)). Thus, the court was not divested of jurisdiction to enter the June 3, 2002 order dismissing the case for failure to retain legal counsel.

Accordingly, IT IS HEEBY ORDERED that the motion for reconsideration (Doc. No. 55) is DENIED.

SO ORDERED this 31 day of October, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX M
UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-1558

CAPPY ASCHEIM,
Appellant
v.
FRED C. JUG, JR., ESQUIRE;
BRANDT, MILNES & REA, a professional
corporation, attorneys at law

(Amended See Clerk's Order of 5/22/02)

On Appeal From the United States District Court
for the Western District of Pennsylvania
(D.C. Civ. No. 00-cv-01056)
District Judge: Honorable Robert J. Cindrich

Submitted Under Third Circuit LAR 34.1(a)
December 2, 2002

Before: ALITO, BARRY AND GARTH, CIRCUIT JUDGES

(Filed January 7, 2003)

OPINION

PER CURIAM,

Appellant, Cappy Ascheim, appeals the District Court's order granting appellees' motion seeking to enjoin him from prosecuting an action under the Fair Debt Collection Practices Act, 15 U.S.C. §1962, et. seq. on behalf of his mother. We have jurisdiction over the instant appeal pursuant to 28 U.S.C. §1292(a)(1)[1] We review a District Court's order granting or denying injunctive relief for an abuse of discretion, its factual findings for clear error, and its determinations of questions of law *de novo*. The NutraSweet Co. v. Vit-Mar Enters., Inc., 176 F.3d 151, 153 (3d Cir 1999). After reviewing the District Court record and the parties' submissions on appeal, we conclude that the District Court did not abuse its discretion when it determined that injunctive relief was warranted in this case.

As the District Court correctly concluded, under the principles espoused by this Court in Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), Ascheim, a non-lawyer, may not represent the interests of any other person in federal court. Accordingly, we will affirm the District Court's order enjoining Ascheim from prosecuting the underlying action on behalf of his incompetent mother without the representation of counsel.

---

[1] We note that appellant has perfected an appeal from the District Court's subsequent order dismissing the underlying case in its entirety at C.A. No. 02-2888. The parties' arguments regarding the propriety of the District Court's dismissal of any claims Ascheim allegedly brought in his individual capacity, as opposed to those brought on behalf of his mother, should thus be presented in the briefs submitted in that appeal once the District Court has disposed of Ascheim's pending post-decision motion.

APPENDIX N
General Docket
US Court of Appeals for the Third Circuit
Court of Appeals Docket #: 01-4374
01-4374 USA v. Merlino

. . .

3/4/03 MOTION by Appellee USA in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441, and 01-4453 to file brief containing 57,571 words, filed. Answer due 3/17/03. Certificate of Service dated 3/4/03. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

3/10/03 ORDER (Clerk) referring to a motions panel Appellee's motions to file an overlength brief and to file brief and supplemental appendix out of time in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441 and 01-4453, filed. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

3/13/03 BRIEF on behalf of Appellee USA in 01-4374, 01-4375, 01-4392, , 01-4394, 01-4436, 01-4441 and 01-4453. Pages: 298, Copies: 10, Word Count: 57,571 (granted by Court Order dated 3/13/03 Delivered by mail, filed. Certificate of Service date 3/4/03. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

3/13/03 ORDER (RENDELL - Circuit Judge) granting motion by appellee USA in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441 and 01-4453 for leave to file brief on behalf of US involving seven defendants * in excess of page limit, filed. (* and seven appeals) D-66 (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

APPENDIX O

USCA3 Docket Sheet for 02-2888

02-2888 Ascheim v. Jug, et al.

. . .

6/2/03 Response by appellant to Attorney Gary Milnes's second written, affirmative request to the Court to dismiss the within appeal, received. (sma) (02-2888)

6/5/03 CLERK ORDER (LAR Misc 107.2): Procedurally Terminated Without Judicial Action: Default. (sma) (02-2888)

6/5/03 Certified copy of order to Lower Court. (sma) (02-2888)

6/23/03 1st, 2nd , 3rd, 4th, & 5th, SUPPLEMENTAL RECORD returned. (sma) (02-2888)

6/23/03 RECORD RETURNED. (sma) (02-2888)

. . .

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APPENDIX P
U.S. District Court
Western District of Pennsylvania (Pittsburgh)

CIVIL DOCKET FOR CASE #: 00-CV-1056

ASCHEIM v. JUG, et al

District Court Web PACER(v2.4) Docket Report

00-1056

6/24/03	62	CERTIFIED COPY OF ORDER dated 6/5/03 from U.S. Court of Appeals for the Third Circuit directing that the above entitled case is hereby dismissed for failure to timely prosecute; FURTHER ORDERED that a certified copy of this order be issued forthwith as the mandate. (plh) [Entry date 06/25/03]
6/24/03	--	Record on Appeal returned form U.S. Court of Appeals . . . (Receipt of same mailed 6/25/03) (plh) [Entry date 06/25/03]
7/15/03	--	MOTION TO REOPEN APPEAL per USCA (plh) [Entry date 7/15/03]
7/15/03	--	Certified and transmitted Actual Record on Appeal to U.S. Court of Appeals: (plh) [Entry date 7/15/03]
7/22/03	--	RECEIPT from USCA of receiving actual record on 7/16/03 (plh) [Entry date 07/22/03]
8/6/04	--	Notice from Supreme Court of US advising that application for extension of time within which to file petition for writ of certiorari extended to 9/20/04. (pt) [Entry date 08/06/04]

APPENDIX Q

Presidential Nominations Full Display

Nomination: PN1648-103
Date Received: August 12, 1994

Robert J. Cindrich, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania vice Gustave Diamond, retired.

REFERRED TO: Senate Judiciary
REPORTED BY: Senate Judiciary

LEGISLATIVE ACTIONS

Floor Action: (5120) August 12, 1994 - Received in the Senate and referred to the Committee on Judiciary.

Committee Action: (5750) September 21, 1994 - Committee on Judiciary: Hearings held.

Committee Action: (5890) September 28, 1994 - Committee on Judiciary. Ordered to be reported favorably

Floor Action: (5155) September 28, 1994 - Reported by Mr. Biden, Committee on the Judiciary, without printed report.

Floor Action: (5180) September 28, 1994 - Placed on Senate Executive Calendar: Calendar No 1291

Floor Action: (5310) October 07, 1994 - Confirmed by the Senate by Voice Vote

ORGANIZATION: The Judiciary

Control Number: 103PN0164800

Presidential Nominations Full Display